

**STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION
ORDER BY CONSENT
ISSUED TO
Rock-Tenn Company
Registration Number: 30188**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1301 and 10.1-1184, between the State Air Pollution Control Board and the Rock-Tenn Company for the purpose of resolving certain violations of environmental law and/or regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. “Va. Code” means the Code of Virginia (1950), as amended.
2. “Board” means the State Air Pollution Control Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1301 and 10.1-1184.
3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. “Director” means the Director of the Department of Environmental Quality.
5. “Order” means this document, also known as a Consent Order.
6. “Rock-Tenn” means Rock-Tenn Company, certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.

7. "Facility" means the Rock-Tenn Company, located in The City of Lynchburg, Virginia.
8. "Regulations" means the "State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution," which have been incorporated into Title 9 of the Virginia Administrative Code (VAC).

SECTION C: Findings of Fact and Conclusions of Law

1. Rock-Tenn owns and operates a facility in the City of Lynchburg, Virginia. The Department designated registration number for this facility is 30188.
2. Rock-Tenn was issued a Stationary Source Permit to Modify and Operate a recycled paperboard manufacturing facility on March 25, 2002.
3. Since the three boilers at Rock-Tenn (Boilers #001, #002 and #003) were constructed prior to March 17, 1972, and have not been modified or reconstructed, the three boilers are subject to 9 VAC 5 Chapter 40 Part II, Article 8, Emission Standards for Fuel Burning Equipment (Rule 4-8).
4. However, Rock-Tenn has voluntarily taken more stringent restrictions (based on stack testing and AP-42) on the emissions of PM, PM-10, Nox and SO₂ from each boiler in their March 25, 2002 permit.
5. Due to these voluntary restrictions, Boilers #001 and #002 are automatically in compliance with the Rule 4-8 limits of 322.1 lb/hr and 0.24 lb/MMBtu for SO₂ and particulate matter respectively when complying with the AP-42 based permit emission limits. Boiler #003 will also automatically be in compliance with the Rule 4-8 limits 264.0 lb/hr and 0.24 lb/MMBtu for SO₂ and particulate matter respectively when complying with the AP-42 based permit emission limits.
6. Therefore, the emission limits for all boilers, given in the March 25, 2002 permit, are carried forth into the Title V permit. The Title V permit for Rock-Tenn was issued on September 24, 2002.
7. The Title V permit requires the facility to perform periodic monitoring on boilers #1, #2, #3 and paper machine #2 as stated in conditions III.B.2, IV.B.2 and VI.B1.

Condition III.B.2 (Boilers #1 and #2) states the following:

"III. Fuel Burning Equipment Requirements - B&W Sterling Class 24 Coal and Distillate Oil Fired Boilers (Ref. Nos. 001 and 002)

B. Monitoring

2. At least one time per calendar week, an observation of the presence of visible emissions from each of the two (2) boilers' stacks (Ref. Nos. 001 and 002) shall be made when the respective boiler is operating. If visible emissions are observed, the permittee shall:

- a. take timely corrective action such that the boiler(s) resumes operation with no visible emissions, or
- b. perform a visible emission evaluation (VEE) in accordance with 40 CFR 60, Appendix A, Method 9 to assure visible emissions from the boiler stack(s) do not exceed 20 percent opacity. The VEE shall be conducted for a minimum of six minutes. If any of the observations exceed 20 percent, the VEE shall be conducted for a total of 60 minutes. If compliance is not demonstrated by this VEE, timely corrective action shall be taken such that the boiler(s) resumes operation with visible emissions of 20 percent or less.

The permittee shall maintain a boiler observation log for each boiler to demonstrate compliance with this condition. The log shall include the date and time of the observations, the observer's name, whether or not there were visible emissions, any VEE recordings and any necessary corrective action. If the boiler(s) has not been operated during the week, it shall be noted in the boiler log book that the boiler(s) was not operated and that a visual observation was not required.

(9 VAC 5-80-110 E)“

Condition IV.B.2 (Boiler #3) states the following:

”IV. Fuel Burning Equipment Requirements - B&W Sterling Class 24 Natural Gas and Distillate Oil Fired Boiler (Ref. No. 003)

B. Monitoring

2. At least one time per calendar month, an observation of the presence of visible emissions from the B&W Sterling Class 24 boiler stack (Ref. No. 003) shall be made. If visible emissions are observed the permittee shall:

- a. take timely corrective action such that the boiler resumes operation with no visible emissions, or,
- b. perform a visible emission evaluation (VEE) in accordance with 40 CFR 60, Appendix A, Method 9 to assure visible emissions from the boiler stack do not exceed 20 percent opacity. The VEE shall be conducted for a minimum of six minutes. If any of the observations exceed 20 percent, the VEE shall be conducted for a total of 60 minutes. If compliance is not demonstrated by this VEE, timely corrective action shall be taken such that the boiler resumes operation with visible emissions of 20 percent or less.
- c. Any time the monthly visible emission observations show visible emissions, or when requested by DEQ, the monitoring frequency shall be increased to once per week for that stack. After achieving four (4) consecutive weeks without visible emissions from this stack, the permittee may resume monthly visible emissions observations.

The permittee shall maintain a boiler observation log to demonstrate compliance with this condition. The log shall include the date and time of the observations, the observer's name, whether or not there were visible emissions, any VEE recordings and any necessary corrective action. If the boiler has not been

operated during the month or week, it shall be noted in the boiler log book that the boiler was not operated and that a visual observation was not required. (9 VAC 5-80-110 E)”

Condition VI.B.1 (Paper Machine #2) states the following:

”VI. Process Equipment Requirements Paper Machine #2 (Ref. No. MCH2)

B. Monitoring

1. At least one time per calendar month, an observation of the presence of visible emissions from each roof exhaust vent for Paper Machine #2 (Ref. No. MCH2) shall be made. If visible emissions are observed the permittee shall:

a. take timely corrective action such the Paper Machine (Ref. No. MCH2) resumes operation with no visible emissions, or

b. perform a visible emission evaluation (VEE) in accordance with 40 CFR 60, Appendix A, Method 9 to assure visible emissions do not exceed 10 percent opacity. The VEE shall be conducted for a minimum of six minutes. If any of the observations exceed 10 percent, the VEE shall be conducted for a total of 60 minutes. If compliance is not demonstrated by this VEE, timely corrective action shall be taken such that the Paper Machine (Ref. No. MCH2) resumes operation with visible emissions of 10 percent or less.

c. Any time the monthly visible emission observations show visible emissions, or when requested by DEQ, the monitoring frequency shall be increased to once per week for that stack. After achieving four (4) consecutive weeks without visible emissions from this stack, the permittee may resume monthly visible emissions observations.

The permittee shall maintain a Paper Machine (Ref. No. MCH2) observation log to demonstrate compliance with this condition. The log shall include the date and time of the observations, the observer's name, whether or not there were visible emissions, any VEE recordings and any necessary corrective action. If the Paper Machine (Ref. No. MCH2) has not been operated during the month or week, it shall be noted in the Paper Machine log book that the Paper Machine (Ref. No. MCH2) was not operated and that a visual observation was not required. (9 VAC 5-80-110 E)”

8. An onsite inspection was conducted at the facility on May 22, 2003. DEQ observed that periodic monitoring records for boilers #001, #002, #003 and paper machine #2 had not been maintained since the issuance of the Title V permit. Periodic Monitoring records are required to ensure that the opacity/emissions are within the permit limits for PM and PM-10. DEQ cannot evaluate or substantiate compliance without these monitoring records as required by the Title V permit issued September 24, 2002.
9. The Regulations at 9 VAC 5-80-110 E states the following:
“Monitoring. Each permit shall contain terms and conditions setting out the following requirements with respect to monitoring:

1. All emissions monitoring and analysis procedures or test methods required under the applicable requirements, including any procedures and methods promulgated pursuant to Section 504 (b) or Section 114 (a) (3) of the federal Clean Air Act concerning compliance monitoring, including enhanced compliance monitoring.
2. Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to subsection F (1) (a) of this section. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of subsection E (2) of this section.
3. As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods."

10. Rock-Tenn is in violation of 9 VAC 5-80-110 E of the Regulations because logs of periodic monitoring were not maintained on boilers #001, #002, #003 and paper machine #2 as required by the Title V permit issued on September 24, 2002. The regulation 9 VAC 5-80-110 E is incorporated by reference in conditions III.B.2, IV.B.2 and VI.B1 of the Title V permit.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority of §§10.1-1307 D., 10.1-1309, 10.1-1184, §10.1-1316 C., and 10.1-1186.2 orders and Rock-Tenn agrees that:

1. Rock-Tenn shall pay a civil charge of \$11,573.00 dollars for the violations described in Section C of this Order.
2. Rock-Tenn shall make a payment to the Department of \$11,573.00 of this civil charge within 30 days of the effective date of this Order. Payment shall be by check, certified check, money order, or cashier check payable to "Treasurer of the Commonwealth of Virginia" and sent to:

Receipts Control
Department of Environmental Quality
PO Box 10150
Richmond, Virginia 23240

Rock-Tenn shall include its Federal Identification Number with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this paragraph.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Rock-Tenn, for good cause shown by Rock-Tenn, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to Rock-Tenn by DEQ on June 9, 2003. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Rock-Tenn admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Rock-Tenn consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Rock-Tenn declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 9-6.14:1 *et seq.*, and the State Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Rock-Tenn to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Rock-Tenn shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Rock-Tenn shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Rock-Tenn shall notify the DEQ Regional

Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Rock-Tenn. Notwithstanding the foregoing, Rock-Tenn agrees to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Rock-Tenn. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Rock-Tenn, from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signature below Rock-Tenn voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of _____, 2003.

Director
Department of Environmental Quality

Rock-Tenn Company voluntarily agrees to the issuance of this Order.

By: _____

Date: _____

Commonwealth of Virginia

City/County of _____

The foregoing document was signed and acknowledged before me this ____ day of

_____, 2003, by _____, who is
(name)

_____ of Rock-Tenn Company on behalf of the Corporation.
(title)

Notary Public

My commission expires: _____.